

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555 (JMP)

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5 In the Matter of:

6
7 LEHMAN BROTHERS HOLDINGS INC., ET AL.,

8
9 Debtors.

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11 - - - - - x

12
13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16
17 May 31, 2012

18 10:07 AM

19
20 B E F O R E :

21 HON JAMES M. PECK

22 U.S. BANKRUPTCY JUDGE

1 Hearing re: Debtors' Seventy-Third, One Hundred Eighteenth,
2 One Hundred Thirtieth, One Hundred Thirty-First, One Hundred
3 Thirty-Third, One Hundred Thirty-Fourth, One Hundred Thirty-
4 Fifth, One Hundred Seventh-Sixth, and Two Hundred and
5 Seventh Omnibus Objections to Claims (To Reclassify Proofs
6 of Claim as Equity Interests) [ECF No. 24591]

7

8 Hearing re: Debtors' One Hundred and Eighty Ninth Omnibus
9 Objection to Claims (No Liability Repo Claims) [ECF No.
10 19870]

11

12 Hearing re: Debtors' One Hundred Fifty-Ninth Omnibus
13 Objection to Claims (Invalid Blocking Number LPS Claims)
14 [ECF No. 18407]

15

16 Hearing re: Debtors' One Hundred Seventy-Third Omnibus
17 Objection to Claims (No Liability Employee Claims) [ECF No.
18 19399]

19

20 Hearing re: Debtors' Two Hundred Fifty-Sixth Omnibus
21 Objection to Claims (Purchased Contract Claims) [ECF No.
22 24933]

23

24 Hearing re: Plan Administrator's Objection to Claims filed
25 by Kathleen Arnold and Timothy A. Cotten [ECF No. 27263]

1 Hearing re: Lehman Brothers Holdings Inc.'s and Creditors
2 Committee's Objection to Claim No. 67911 [ECF No. 27050]

3

4 Hearing re: Debtors' Twenty-Eighth Omnibus Objection to
5 Claims (Valued Derivative Claims) [ECF No. 9983]

6

7 Hearing re: Debtors' Thirty-Fifth Omnibus Objection to
8 Claims (Valued Derivative Claims) [ECF No. 11260]

9

10 Hearing re: Debtors' Forty-First Omnibus Objection to
11 Claims (Late-Filed Claims) [ECF No. 11306]

12

13 Hearing re: Debtors' Sixty-Third Omnibus Objection to
14 Claims (Valued Derivative Claims) [ECF No. 11978]

15

16 Hearing re: Debtors' Sixty-Seventh Omnibus Objection to
17 Claims (Valued Derivative Claims) [ECF No. 12533]

18

19 Hearing re: Debtors' Seventy-First Omnibus Objection to
20 Claims (Valued Derivative Claims) [ECF No. 13230]

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22 Hearing re: Debtors' Eighty-Fourth Omnibus Objection to
23 Claims (Valued Derivative Claims) [ECF No. 13955]

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1 Hearing re: Debtors' Eighty-Sixth Omnibus Objection to
2 Claims (No Liability Claims) [ECF No. 14440]

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4 Hearing re: Debtors' Eighty-Seventh Omnibus Objection to
5 Claims (No Liability Claims) [ECF No. 14442]

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7 Hearing re: Debtors' Eighty-Eighth Omnibus Objection to
8 Claims (No Liability Claims) [ECF No. 14450]

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10 Hearing re: Debtors' Eighty-Ninth Omnibus Objection to
11 Claims (No Liability Claims) [ECF No. 14452]

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13 Hearing re: Debtors' Ninetieth Omnibus Objection to Claims
14 (No Liability Claims) [ECF No. 14453]

15

16 Hearing re: Debtors' Ninety-Second Omnibus Objection to
17 Claims (No Blocking Number LPS Claims) [ECF No. 14472]

18

19 Hearing re: Debtors' Ninety-Sixth Omnibus Objection to
20 Claims (Duplicative LPS Claims) [ECF No. 14491]

21

22 Hearing re: Debtors' Ninety-Seventh Omnibus Objection to
23 Claims (Insufficient Documentation) [ECF No. 14492]

24

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1 Hearing re: Debtors' One Hundred Third Omnibus Objection to
2 Claims (Valued Derivative Claims) [ECF No. 15003]

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4 Hearing re: Debtors' One Hundred Twelfth Omnibus Objection
5 to Claims (Invalid Blocking Number LPS Claims) [ECF No.
6 15014]

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8 Hearing re: Debtors' One Hundred Twentieth Omnibus
9 Objection to Claims (No Blocking Number LPS Claims) [ECF No.
10 16074]

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12 Hearing re: Debtors' One Hundred Twenty-Fifth Omnibus
13 Objection to Claims (Insufficient Documentation) [ECF No.
14 16079]

15

16 Hearing re: Debtors' One Hundred Twenty-Ninth Omnibus
17 Objection to Claims (No Liability Derivatives Claims) [ECF
18 No. 16114]

19

20 Hearing re: One Hundred Thirty-Eighth Omnibus Objection to
21 Claims (No Liability Derivatives Claims) [ECF No. 16865]

22

23 Hearing re: Debtors' One Hundred Fifty-Fifth Omnibus
24 Objection to Claims (Valued Derivative Claims) [ECF No.
25 17468]

1 Hearing re: Debtors' One Hundred Fifty-Sixth Omnibus
2 Objection to Claims (No Liability Derivatives Claims) [ECF
3 No. 17469]
4

5 Hearing re: Debtors' One Hundred Sixtieth Omnibus Objection
6 to Claims (Settled Derivatives Claims) [ECF No. 18444]
7

8 Hearing re: Debtors' One Hundred Sixty-Second Omnibus
9 Objection to Claims (Valued Derivative Claims [ECF No.
10 18405]
11

12 Hearing re: One Hundred Sixty-Third Omnibus Objection to
13 Claims (No Liability Derivatives Claims) [ECF No. 18409]
14

15 Hearing re: One Hundred Seventy-Ninth Omnibus Objection to
16 Claims (No Liability Derivatives Claims) [ECF No. 19378]
17

18 Hearing re: Debtors' One Hundred Eighty-Second Omnibus
19 Objection to Claims (Valued Derivative Claims) [ECF No.
20 19398]
21

22 Hearing re: Debtors' One Hundred Eighty-Eighth Omnibus
23 Objection to Claims (Duplicative LPS Claims) [ECF No. 19871]
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1 Hearing re: Debtors' One Hundred Eighty-Ninth Omnibus
2 Objection to Claims (No Liability Repo Claims) [ECF No.
3 19870]
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5 Hearing re: Debtors' One Hundred Ninety-First Omnibus
6 Objection to Claims (Valued Derivative Claims) [ECF No.
7 19888]
8

9 Hearing re: Debtors' Objection to Proof of Claim No. 29702
10 [ECF No. 20100]
11

12 Hearing re: Debtors' Two Hundred Thirteenth Omnibus
13 Objection to Disallow and Expunge Certain Filed Proofs of
14 Claim [ECF No. 20102]
15

16 Hearing re: Debtors' Two Hundred Fourteenth Omnibus
17 Objection to Disallow and Expunge Certain Filed Proofs of
18 Claim [ECF No. 20103]
19

20 Hearing re: Debtors' Two Hundred Fifteenth Omnibus
21 Objection to Disallow and Expunge Certain Filed Proofs of
22 Claim [ECF No. 20104]
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1 Hearing re: Debtors' Two Hundred Sixteenth Omnibus
2 Objection to Disallow and Expunge Certain Filed Proofs of
3 Claim [ECF No. 20105]
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5 Hearing re: Debtors' Two Hundred Seventeenth Omnibus
6 Objection to Disallow and Expunge Certain Filed Proofs of
7 Claim [ECF No. 20106]
8

9 Hearing re: Debtors' Two Hundred Nineteenth Omnibus
10 Objection to Claims (Valued Derivative Claims) [ECF No.
11 20787]
12

13 Hearing re: Debtors' Objection to Proof of Claim No. 66099
14 Filed by Syncora Guarantee, Inc. [ECF No. 20087]
15

16 Hearing re: Debtors' Two Hundred Twenty-Eighth Omnibus
17 Objection to Claims (No Liability Derivatives Claims) [ECF
18 No. 20886]
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20 Hearing re: Debtors' Two Hundred Thirty-Second Omnibus
21 Objection to Claims (Valued Derivative Claims) [ECF No.
22 21727]
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1 Hearing re: Debtors' Two Hundred Thirty-Sixth Omnibus
2 Objection to Claims (No Liability Derivatives Claims) [ECF
3 No. 23168]
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5 Hearing re: Two Hundred Forty-Fifth Omnibus Objection to
6 Claims (Unissued Guarantee Claims) [ECF No. 23251]
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8 Hearing re: Debtors' Two Hundred Forty-Seventh Omnibus
9 Objection to Claims (No Liability Claims) [ECF No. 24088]
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11 Hearing re: Debtors' Two Hundred Fifty-Third Omnibus
12 Objection to Claims (Valued Derivative Claims) [ECF No.
13 24117]
14

15 Hearing re: Debtors' Two Hundred Sixty-First Omnibus
16 Objection to Claims (No Guarantee Claims) [ECF No. 24995]
17

18 Hearing re: Debtors' Two Hundred Sixty-Sixth Omnibus
19 Objection to Claims (Valued Derivative Claims) [ECF No.
20 25000]
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22 Hearing re: Debtors' Two Hundred Sixty-Eighth Omnibus
23 Objection to Claims (Duplicative Claims) [ECF No. 26189]
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1 Hearing re: Debtors' Two Hundred Seventieth Omnibus
2 Objection to Claims (Valued Derivative Claims) [ECF No.
3 26324]
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5 Hearing re: Two Hundred Seventy-Seventh Omnibus Objection
6 to Claims (No Guarantee Claims) [ECF No. 26241]
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8 Hearing re: Two Hundred Eightieth Omnibus Objection to
9 Claims (No Liability Claims) [ECF No. 27358]
10

11 Hearing re: Two Hundred Eighty-Second Omnibus Objection to
12 Claims (Late-Filed Claims) [ECF No. 27374]
13

14 Hearing re: Two Hundred Eighty-Seventh Omnibus Objection to
15 Claims (No Liability Claims) [ECF No. 27385]
16

17 Hearing re: Two Hundred Ninety-Third Omnibus Objection to
18 Claims (No Liability Claims) [ECF No. 27381]
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1 P R O C E E D I N G S

2 THE COURT: Be seated. Good morning.

3 MR. BERNSTEIN: Good morning, Your Honor. Mark
4 Bernstein, from Weil, Gotshal & Manges, on behalf of Lehman
5 Brothers Holdings, Inc. and certain of its affiliates. We
6 have a relatively short agenda for you this morning, five
7 uncontested items and two contested items. Unless Your
8 Honor has any questions, to begin, we'll -- I propose we
9 just take them in order.

10 THE COURT: Sure.

11 MR. BERNSTEIN: The first item on the agenda is a
12 status conference with respect to the number omnibus --
13 omnibus objections the debtors previously filed seeking to
14 reclassify as equity claims filed by former employees based
15 on restricted stock units and related instruments. At the
16 claims hearing on December 21st, the debtors proceeded on a
17 contested basis seeking to reclassify these claims.

18 At the hearing, Your Honor noted that there
19 appeared to be several factual disputes between the parties
20 relating to how these programs worked and requested, or
21 suggested, that the parties work together to agree on some
22 -- on the facts and come back to court to argue on the legal
23 issues.

24 At the January 26th claims hearing, my colleague,
25 Rob Lemons reported to the Court that it was our intent to

1 prepare a set of stipulated facts following diligence by --
2 by Lehman Brothers and circulate that to the -- the
3 claimants and counsel for claimants that appeared at the
4 December 21st hearing. Lehman spent a fair amount of time
5 preparing those facts and conducting diligence and
6 circulated that set of stipulated facts, or proposed set of
7 stipulated facts, to that group on April 17th, requesting
8 that claimants provide any comments, additional facts they
9 wanted to include, disputes within a three-week period.

10 The debtors received about five responses
11 disputing certain facts that were included in the stipulated
12 facts, but a group of the claimants and counsel for
13 claimants formed together and said they were unable to
14 respond to the stipulated facts until they were able to
15 conduct discovery on -- on these matters, and they provided
16 the debtors with a list of documents, a fairly extensive
17 list of documents that they would need before they could
18 comment on the stipulated facts and suggested that they may
19 want to take some depositions, as well.

20 LBHI has been in communication with this group on
21 multiple occasions and intends to work with this group to
22 provide some of the requested information in an organized
23 and orderly fashion, and on an informal basis at this -- at
24 this time.

25 Due to the number of claimants involved, LBHI has

1 requested that the claimants organize themselves into
2 groups. As you may recall, certain of the creditors had
3 started to do that at the hearing saying that some -- some
4 of them had different arguments, and this -- our -- we
5 suggested this, because we -- we believe this will make the
6 discovery simpler to deal with smaller groups rather than
7 one large group.

8 At this time, the parties are working together
9 cooperatively, but to the extent any disputes may arise, as
10 to the extent of discovery or any limitations, we may come
11 back before the Court seeking some kind of -- some orders or
12 protective orders related thereto. There are no future
13 scheduled hearings on these matters. Once the discovery is
14 complete, we intend to work with the -- with the claimants
15 and -- and Your Honor to figure out the best way to provide
16 the evidence to Your Court, whether it be by declarations,
17 admissions, additional pleadings, or -- or actual live
18 evidence, and, at that time, we can schedule a further
19 hearing to have these matters heard again on a contested
20 basis.

21 THE COURT: What's your anticipated time horizon
22 for all this?

23 MR. BERNSTEIN: The discovery is -- I -- I
24 imagine, is going to take at least a couple of months to --
25 to get through. There is a fair -- fairly large request by

1 -- by the current group outstanding.

2 In addition, there are other RSU claims that have
3 not yet been put on objections. Our intention is to file
4 those objections to those claims in the next couple of
5 weeks, and therefore, include all those holders in -- in the
6 process, to the extent they want to be included in the
7 discovery process, and then, we can deal with the issues
8 altogether at one time. So, I think, before we get back to
9 Your Honor for a contested hearing, it's more likely to be
10 fourth quarter of this year.

11 THE COURT: Okay. How many groups are we dealing
12 with?

13 MR. BERNSTEIN: Well, they seem to have formed
14 into one group, and the calls that we've had have been all
15 with one group. However, they've identified to us that they
16 believe there are at least -- there -- there are four groups
17 with -- within that one group. Now, there may be -- much of
18 the information that they're requesting may relate to all of
19 them, but there is definitely certain parts of the
20 information that only relate to some of them.

21 Some of the -- as you may recall, there was a
22 group of Neuberger Berman creditors. They're a group of
23 commissioned salespeople, and they have arguments that
24 differ from just the general salaried employees who hold
25 RSUs. So I -- I believe there are four groups they've

1 separated themselves into, and it may make sense, when we
2 have the hearings, to actually have separate hearings for --
3 for the different groups, or it may not. I just -- I guess,
4 it's not clear at this time what the best approach will be.

5 THE COURT: Okay.

6 MR. BERNSTEIN: So, with that, we will continue to
7 work with these groups, and -- and we'll come back to you if
8 we need your assistance.

9 THE COURT: Okay. I can see that there are any
10 number of familiar faces who are either affected employees
11 or counsel for affected employees -- employees in the room,
12 and I don't know if any of them wish to say anything. This
13 isn't intended to be a reargument of anything as much as it
14 is a status report. But, if there's anything that has been
15 reflected in the report of debtors' counsel that's
16 incomplete or inaccurate, this is a time to say something.

17 MR. SCHAGER: With the Court's permission?

18 THE COURT: You can come forward. Just, please,
19 identify yourself, for the record.

20 MR. SCHAGER: Thank you. Your Honor, I have
21 signed in, and I appear for claimants Michael K. McCully and
22 Michael Gran. My name is Richard Schager, of the firm of
23 Stamell & Schager.

24 Your Honor, there were, I think, basically, two
25 points that I wanted to address today. One was to go

1 through things that have been done. More seriously, I think
2 Your Honor -- and I've studied the transcript pretty
3 carefully. I think Your Honor gave some pretty explicit
4 instructions that I don't think have been followed in the
5 responses so far, and I'd like to take just two or three
6 minutes to go over those. In the --

7 THE COURT: This is your opportunity, then.
8 That's fine.

9 MR. SCHAGER: In the -- in the first instance, in
10 terms of the draft's counter-stipulation, there was a -- a
11 formal counter-stipulation prepared by a group of claimants.
12 It wasn't just one individual. There was a counter-
13 stipulation also based on due diligence and based on
14 documents, and there's been no response to it yet.

15 I don't know if that indicates that they don't
16 consider it relevant, or whether the counter-stipulated
17 facts are significant enough to be set aside for the time
18 being. I think it's the later, but, in any case, it was an
19 organized group that submitted a counter-stipulation, and
20 there's been no response to it.

21 THE COURT: Well, let -- let me just inquire about
22 the organized group that you've referenced. I take it
23 you're part of that group?

24 MR. SCHAGER: That's correct, Your Honor.

25 THE COURT: And are you speaking for yourself and

1 your clients, or are you speaking for the group right now?

2 MR. SCHAGER: We have made no committee
3 appointments. We have no spokesman for the group. I speak
4 only for two claimants. One is a holder of RSUs. The other
5 is a holder of contingent stock awards, the category given
6 to mostly overseas purchasers.

7 THE COURT: Okay, and, if you could just give me a
8 little bit of color as to -- as to what --

9 MR. SCHAGER: Sorry, overseas employees.

10 THE COURT: -- the group consists of. How many
11 lawyers are involved? How many employees are represented,
12 and how many additional parties may be represented, if you
13 know?

14 MR. SCHAGER: I -- I -- I think, in the -- the
15 people who signed on to the counter-stipulation, Your Honor,
16 are probably four or five law firms and -- and three or four
17 individual pro se claimants. Now, I am -- I'm -- I'm not
18 under oath on that. I'd have to check, and I don't have the
19 counter-stipulation.

20 THE COURT: But that -- that's an approximation,
21 and -- and --

22 MR. SCHAGER: But that's the -- an approximation.
23 They are drawn, Your Honor, from the group that was the
24 object of the initial notice from Weil, Gotshal proposing a
25 stipulation. So we haven't tried to make any effort to

1 circulate beyond that group.

2 THE COURT: Okay. Go back -- go back to your
3 presentation, please.

4 MR. SCHAGER: Okay. Now, the other thing, Your
5 Honor, that just came out in a conference call last week,
6 and it's been raised for the Court today, is that there are
7 other claimants of holders of RSUs and CSAs who have not
8 been named yet. So, basically, there's another group out
9 there for whom this process is starting all over, and I
10 think that's a significant fact in terms of what I want to
11 propose to the Court at the end of this.

12 THE COURT: Well -- well, debtors' counsel made
13 clear that it was the intent to bring on additional omnibus
14 objections in reference to RSUs and for there to be a
15 comprehensive process. There is nothing wrong with that,
16 and I'm -- I actually support that idea.

17 MR. SCHAGER: I think every claim should be
18 addressed, and every claim should be noticed, Your Honor. I
19 do agree with that. I'm just pointing out the sequence,
20 that it didn't come up until we raised it in conferences
21 outside of -- outside of court.

22 THE COURT: Okay. I don't see -- I don't see
23 anything controversial so far.

24 MR. SCHAGER: Okay. Your Honor called for -- or
25 criticized what had happened so far. This is on December 21

1 -- for there being a lack of a formal evidentiary record.
2 You referred counsel to your decision in the TBA case in the
3 SIPRA (ph) proceeding, and -- and we could see there how
4 Your Honor called for the development of an evidentiary
5 record. I'll come back to that in a minute.

6 You also asked the Court to define sub-class --
7 you asked the parties to define sub-classes. You asked to
8 do a -- that the counsel do a better job of managing the
9 process, and that's really the thrust of what I'm getting
10 to. You did also ask for us to bear in mind how to
11 distinguish Enron, which I think can be done, but I'm not
12 sure that's a subject for today.

13 In terms of the evidentiary record, Your Honor, I
14 submit that the debtors have done nothing so far. In
15 support of their omnibus objections and in their reply from
16 last December and in their sur-reply from January, there is
17 no affidavit. There is no authenticated document.

18 There is nothing on which this Court could base a
19 decision. There's no -- no basis is outlined for taking
20 judicial notice of notice that were submitted. There's been
21 nothing done by the debtors to develop an evidentiary record
22 here. The only affidavits in the record are the affidavits
23 of the claimants, and, for the most part, they're opposed in
24 briefing, but they're not opposed in any kind of evidentiary
25 way. There are legal arguments submitted by the debtors,

1 but there's no evidence.

2 In terms of defining the sub-classes, I think what
3 Your Honor is seeing, through your staff or otherwise, is,
4 basically, the debtor saying, "No, we're not going to do
5 that. You don't need that information, Your Honor, because
6 these are all equity-based compensation, and we're not going
7 to break this down," and I think that's dead wrong, but I
8 think there's a reason for it.

9 The entire process, the entire omnibus objection
10 motion -- and this is a point I alluded to when I spoke very
11 briefly on December 21 -- depends on the stock option
12 analysis. And I said at the time, "Well, how many stock
13 options are there here," and the answer was very vague and
14 muddy. It was very vague and muddy, because the analysis,
15 the objection is contingent on the stock option analysis
16 that Judge Gonzales adopted in Enron, and it doesn't apply
17 here, because there's not a single stock option that's a
18 subject of these motions, and that's why the debtors are
19 refusing to clarify that issue.

20 Now, in terms of managing the process, Your Honor,
21 I think the Court can easily recognize that there's been no
22 effort here by the debtors to build the evidentiary record
23 that the Court requested. The claimants are cooperating as
24 a group among themselves, but only informally. There's no
25 formal structure, but the point is that the only evidence

1 the Court has in front of it is what the claimants have
2 submitted.

3 I think, given the -- the debtors' recalcitrance
4 here, in terms of preparing this evidentiary record, and, I
5 think, particularly in light of this new information before
6 the Court now, that they've, basically, got to make new
7 omnibus objections for people who haven't been named yet. I
8 think the Court ought to tell them to do it over and do it
9 right the first time.

10 There's no reason why these motions couldn't be
11 the subject of one set or one consolidated motion or one set
12 of consolidated omnibus motions. They should be submitted
13 with some supporting affidavits that outline an evidentiary
14 basis for the motion, and people ought to be given an
15 opportunity to react.

16 Right now, the Court has the objections to
17 replies. Now, we're talking about a set of stipulated facts
18 that are under negotiation. More evidence is coming in from
19 discovery, and now, you've got a new motion. What kind of
20 record does the Court want here? Why doesn't the Court
21 dismiss these motions -- sorry -- dismiss these objections
22 with leave to remove and do it on a consolidated, organized
23 basis, instead of this slipshod way that it's being handled
24 now?

25 I think the Court should direct the debtors, Your

1 Honor, to do it over and do it right. It's no additional
2 burden on the Court. It's no extension of time, because the
3 discovery process is probably going to take, I think, a --
4 more than few months, six to nine months anyway, but there's
5 no reason why the Court shouldn't have a comprehensible
6 record that can be reviewed in an orderly way on appeal if
7 it goes that route.

8 THE COURT: Okay.

9 Is there anyone else who wants to say anything at
10 this point?

11 MR. SCHAGER: Thank you, Your Honor.

12 THE COURT: By the way, I do not want this to
13 become another repeat of what happened last time. In asking
14 someone else to speak, I am not inviting the room to get up.

15 So this had better be material, and it had better
16 be helpful. This is not an opportunity for a gripe session.

17 MS. SOLOMON: I fully understand that, Your Honor,
18 and I have no intention to make it so.

19 THE COURT: What do you have to say?

20 MS. SOLOMON: Your Honor, I represent a number of
21 RSU and CSA claimants, and I think that it may be apparent,
22 but I just wanted to emphasize to the Court, that the --
23 some of the claimants have organized in a group. Your Honor
24 asked earlier how many counsel and pro se claimants there
25 were. I would say there are approximately 10 to 15 counsel

1 and 6, 7, 8, 9, 10 pro se claimants, in that neighborhood,
2 Your Honor.

3 One of the issues that we've been grappling with,
4 along with the debtors' counsel, is I, for one, and the
5 other -- other various counsel represent only their client,
6 and I understand the debtors are looking for some kind of
7 streamlined process, and we are making attempts to have a
8 streamlined process so that discovery can go forward in an
9 expedited fashion. But I can only speak for my client and
10 not for the various other claimants in the group. So that's
11 one of the issues that we're dealing with.

12 I would note for the Court that I am a little
13 disappointed with the lack of progress that's been made. My
14 understanding is that -- and I was told by debtors' counsel
15 back in January that a pivotal set of documents, along with
16 a proposed stipulated set of facts would be circulated among
17 counsel. We waited for a couple of months for that to
18 occur, and all we got was stipulated facts with no proposed
19 documents.

20 We, in turn, provided the debtors' counsel with a
21 list from a somewhat unified group of -- an informal list of
22 documents that we were seeking, and it also has been
23 proposed by one of claimants' counsel global procedures,
24 which hasn't been responded to, and we haven't received a
25 response to our proposed documents, but we're hopeful, Your

1 Honor, that we can proceed in an expeditious fashion with
2 the debtors' counsel in a consensual manner, and, if that
3 can't occur, obviously, we'll be back before Your Honor.

4 THE COURT: Okay.

5 MS. SOLOMON: That was all I wanted to state for
6 the record, Your Honor.

7 THE COURT: Okay.

8 MR. ABRAMOWITZ: Your Honor, Steven Abramowitz, on
9 behalf of Lisa Marcus. I'm not going to add too much.

10 I just wanted to identify to the judge that we're
11 hopeful the process is going to move better going forward,
12 because we've identified what I believe to be four groups,
13 and I passed along to debtors' counsel what I believe those
14 four groups are, have identified the lawyers, the pro se
15 claimants who are in those groups, and I think now that
16 we've kind of divided into -- if the debtors agree that
17 those are the appropriate four groups, I'm hopeful that the
18 distinguishing facts will allow the process to move forward.

19 Just for Your Honor's information, the four groups
20 that have identified and been speaking to counsel to try to
21 find out who's in those groups, which I've passed on to the
22 debtors, are, one, general RSU claimants; number two,
23 commissioned salespeople with respect to commissions earned
24 in 2008 for which RSUs were not issued; group number three,
25 Neuberger Berman employees; and, group number four, equity -

1 - a different type of equity-like instrument. I'm not
2 recalling the name, an ESL or an ECL. So those are the four
3 types of groups that I -- I -- from what I -- we're aware
4 of, those are the only real four groups, and I passed that
5 along to the debtors, and we're looking forward that, with
6 that group, it'll be a much more efficient process.

7 THE COURT: Okay. Thank you.

8 MR. PLASKETT: Good morning, Your Honor. Rodney
9 Plaskett, appearing pro se.

10 As a commissioned salesperson, I have responded to
11 each of Lehman's counsels' objections and motions, and the
12 most recent one having been their proposed stipulations,
13 wherein, as a person who is responding pro se, they still
14 continued to classify what I view as a sum certain as an
15 equity interest. As pro se appearance and one not familiar
16 with the proceedings of Bankruptcy Court, each motion --
17 each time I respond is a new matter.

18 So how, as a pro se person, do I become familiar
19 with how things will move forward from here, and, if we're
20 heading toward trial, how I will then be enabled to bring
21 forth an expert witness to lay out what I believe counsel
22 for debtors is totally missing in terms of understanding my
23 desire to recoup the sum certain versus their belief that
24 that sum certain is, in some way, an RSU?

25 THE COURT: Are you looking for an answer from me

1 to that question?

2 MR. PLASKETT: In part, sir.

3 THE COURT: I'm not sure that I can answer it
4 during the course of this status conference, but we'll talk
5 in a moment about the establishment of procedures that will
6 apply across the board to each of the four groups, and, if
7 it turns out that there's an additional group or another
8 sub-part, it will apply to these groups as further refined.

9 As an individual who is appearing without counsel,
10 you're making an election not to incur the expense of
11 outside counsel, and, as a member of a class, in many
12 respects, your situation, unless it's truly individual, will
13 be controlled by evidence presented with respect to the
14 class in which you're a member.

15 So I really can't answer the question you've
16 raised in isolation. We're going to have to see how this
17 evolves.

18 MR. PLASKETT: The -- the class of commissioned
19 salespersons is fairly small, and, in effect, we may be
20 forced into retaining counsel as a class of possibly as many
21 as -- as few as four individuals. I -- I -- I believe from
22 the correspondence --

23 THE COURT: That's -- that's your privilege.

24 MR. PLASKETT: -- that --

25 THE COURT: You can either appear on your own, or

1 you can appear with counsel. Ordinarily, in a federal
2 court, you're better off having a lawyer at your side.

3 MR. PLASKETT: Understood. It's -- I guess it's
4 the -- the pain of having a claim that's been going on for
5 several years then eaten into by legal fees, which is, of
6 course, the -- the cost of -- of appearance, in effect. But
7 it -- it will -- it will be -- definitely help in terms of
8 administration to at least have some of the process laid out
9 so that, if we determine to move forward pro se, we'll have
10 the opportunity to accurately do so.

11 THE COURT: Okay. I understand your concern.

12 MR. PLASKETT: You answered my question.

13 MR. HUTTON: Good morning, Your Honor. My name's
14 Randy Hutton. I'm a pro se client -- claimant also.

15 I'm a little concerned about the group of the sub-
16 classes and how it relates to my client, which I feel is
17 sufficiently different from the general classes that were
18 laid out. And, while I think I could benefit from the
19 discovery and have been on some of the e-mail chains as far
20 as the communications between some of these groups and the
21 debtor, that could be helpful. However, I -- I am concerned
22 that it may end up being -- that I'd be part of a class that
23 my client doesn't really fit, and I'm not sure how that
24 should be resolved.

25 THE COURT: Well, you're either a part of a class,

1 or you're not. I don't know enough about the specifics of
2 your claim to make a judgment yet as to whether you're by
3 yourself or whether you're really part of a class. And that
4 remains to be determined.

5 MR. HUTTON: At what point would that end up being
6 determined? Would the debtor --

7 THE COURT: I don't know yet.

8 MR. HUTTON: -- just respond?

9 THE COURT: We're going to talk some more about it
10 right now.

11 MR. HUTTON: Okay. All right. Thank you, Your
12 Honor.

13 THE COURT: Mr. Bernstein, there are some general
14 concerns expressed here as to the manner in which the
15 debtors have been managing the process, and you may want to
16 defend yourself and those who've been working on this from
17 the challenges that have been addressed by the first
18 speaker. But I'm, frankly, less concerned about what
19 happened in the past or up to this point and more concerned
20 about procedures on a go-forward basis that are fair and
21 reasonable procedures, not only to the individuals who are
22 affected by this, but that also provide a rational basis for
23 grouping claimants and for presenting relevant information
24 to the Court so that I can make some thoughtful decisions
25 about this dispute.

1 It has been suggested that, in effect, we start
2 over. You don't need to respond to that. We're not
3 starting over. That's a completely inappropriate remark,
4 which I reject out of hand.

5 The omnibus claim procedures have been ongoing now
6 for a very long time, and, given the nature of those
7 procedures, omnibus objections are filed in groups. I have
8 no control over the decision making of the debtor as to
9 which particular claims end up in which particular omnibus
10 objection. That's a decision made by the debtor and its
11 counsel.

12 But, once an objection has been lodged and parties
13 have an opportunity to respond, it is either resolved as
14 uncontested, or it is a contested matter. We have a series
15 of contested matters in reference to the RSU issues. I
16 gather we are going to have additional objections addressed
17 to claimants whose claims are based on RSUs.

18 There is nothing administratively awkward, from my
19 perspective, in having a consolidated set of procedures that
20 apply to all similarly-situated RSU claimants, and it is
21 customary for this Court to consolidate matters of like
22 type. So there is certainly nothing, under the rules or the
23 procedures of this Court, that would require a do-over, as
24 has been suggested. So you don't have to respond to that.

25 MR. BERNSTEIN: Thank you, Your Honor. Again,

1 Mark Bernstein, from Weil, on behalf of Lehman. If I may go
2 back and respond to some of the statements that were made by
3 some of the claimants and counsel.

4 At the December hearing, there -- parties did
5 raise what they believed to be issues of fact, and Your
6 Honor did suggest that the debtors work with the claimants
7 to figure out the -- a process where we can come back to
8 court and -- and provide you with an -- an accurate and
9 factual record.

10 You mentioned the -- the issue that you had in --
11 in the LBI case where their parties did stipulate to facts,
12 and then, you also suggested, at the end, the parties work
13 together to provide a set of procedures to agree on whatever
14 that that -- that type of evidence would look like, whether
15 it be declarations, whether it be live evidence.

16 Given the large number of RSU claimants that we
17 were dealing with, we considered the matter and proposed to
18 use -- to have the debtors prepare a set of stipulated
19 facts. We were going to go back and do our own diligence,
20 find the documents that we have, try to understand these
21 programs more thoroughly than perhaps we did the first time
22 and send that stipulated facts around to the group of -- of
23 parties that appeared at the hearing.

24 The debtors reported that that's what they were
25 going to do in January. Nobody raised their hands. Nobody

1 asked any questions. Nobody served any discovery. Nobody
2 had any alternate procedures that they suggested at the
3 time.

4 So, following that, the debtors went back, spent a
5 fair amount of time talking to the client, looking through
6 records, finding the documents that we were able to find,
7 prepared the stipulated facts as we believed them to be
8 relating to these programs, attached the plan documents that
9 the debtors were able to locate, contrary to what
10 Ms. Solomon said. We did attach -- the total stipulated
11 facts was a couple hundred pages. We attached multiple plan
12 documents that we have to the -- to the set of stipulated
13 facts.

14 We gave parties three weeks to respond. Only two
15 days before their deadline for responding, early in May,
16 just not more than three to four weeks ago, did this group
17 of creditors first -- for the first time, identify to us
18 that they wanted discovery, that they needed discovery
19 before they could respond to our stipulated facts, and they
20 served a 47 -- 47-point request for information, which was
21 extraordinarily broad.

22 We did also receive from Mr. Schager a counter-
23 proposal for the stipulated facts that's basically marked up
24 our stipulated facts, and we received from -- from Mr.
25 Shoughton (sic) some comments or some -- some points in our

1 stipulated facts which he disagreed with.

2 However, since the -- it -- it appeared from the
3 large group of people who served discovery that we were not
4 going to be able to agree to one set of stipulated facts
5 quickly with this group and -- and propose that to the
6 Court, we haven't responded to the counter-stipulated facts,
7 and we haven't responded to Mr. Shoughton (sic) to -- to
8 dispute or try to resolve those issues, because, clearly,
9 this is going down a more type ordinary litigation path
10 where there is going to be discovery, parties are going to
11 be -- require additional information, including Mr. Schager,
12 who's part of that group.

13 So, before we could even agree on a stipulated
14 facts and start negotiating what those facts look like,
15 these parties said they want discovery. So it doesn't make
16 sense to negotiate stipulated facts when parties are saying,
17 "Well, I can't agree to these until you give me this
18 information."

19 So, at their request, we have decided, and we've
20 agreed, that we will go through this process with them. We
21 will give them discovery to the extent reasonable, relevant,
22 and available, and we will work with them on -- on that
23 process. And, once we have gone through that process, at
24 that time, we will be able to discuss then what the proper
25 means are to provide that evidence to the Court and come

1 back to the judge, Your Honor, for -- for a hearing.

2 That is not today. We are not here -- contrary to
3 what some people are making arguments today, we're not here
4 seeking any kind of ruling from Your Honor today on these
5 matters. So I vehemently dispute any argument that we have
6 not followed Your Honor's directions from the initial
7 hearing.

8 The -- the -- the other part of -- of that
9 hearing, Your Honor, asked us to prepare a -- a revised
10 reply, an annotated reply, which identified which arguments
11 in a reply related to which claimant. We did that. We
12 filed that. We identified claimant by claimant, here are
13 the arguments we believe you raised in your responses, and
14 here's the part of our reply which relates to your -- which
15 relates to your response and to -- and to your claims.

16 So I -- I believe, and I -- I strongly believe
17 that we've followed everything that was requested of us.
18 We've been working with these groups of claimants on this
19 process.

20 One claimant raised that they've suggested a set
21 of procedures to -- and deadlines to deal with the discovery
22 process. She failed to mention that they first provided
23 that to us yesterday for the first time.

24 We had a call with them yesterday afternoon to at
25 least discuss this process further, and we -- and -- and we

1 had told them we would look at their procedures, and we
2 would set up further calls to discuss it. We have not
3 gotten there yet.

4 This is a very difficult process for the debtors
5 to manage. There's a dozen people here or so today. There
6 is others who are not here, but who also have claims that
7 are pending. There's about another hundred or so or more
8 claimants that will be included on the new objections, and
9 we're trying --

10 THE COURT: Is that -- is that the end of it? I
11 mean, when you say a hundred or so, will that, in effect, be
12 the entire remaining class of RSU claimants that will be the
13 subject of this process?

14 MR. BERNSTEIN: Yes, the -- the objections that
15 will be filed in the next two weeks will include all
16 remaining claims that are based on RSUs that have been
17 identified.

18 As Your Honor knows, there are thousands of claims
19 in this case. Sometimes claims are filed a little less
20 clear than others. Some of them say RSU. It's very clear
21 it's an RSU claim. Some of them just say employee
22 compensation, and we learn at a later date that it's an RSU
23 claim. We're -- but, as far as we are aware, the objections
24 filed in the next two weeks will result in objections being
25 filed to the entire universe of RSU claims.

1 THE COURT: Okay.

2 Now, one of the things that makes this a
3 challenging administrative problem, principally for debtors'
4 counsel at this point, but, frankly, it's a problem that
5 each affected claimant also shares, is that, in some
6 instances, we have parties who are represented by
7 sophisticated counsel. In some instances, we have parties
8 who are simply acting on their own as pro se claimants.

9 We have individuals who say, "I don't think I'm
10 part of any group," as one individual just said publicly,
11 and others who presumably would acknowledge that they are
12 part of a group. So it seems to me that we start out with
13 what is fundamentally a classification problem in a series
14 of related objections that do not fit within classic class
15 action procedures, although we are dealing with an
16 identified class, not too numerous to identify, because we
17 have, in fact, identified them, who either have already
18 interposed responses to the omnibus objection with respect
19 to the RSU claims, or who, in the future, may do so and, in
20 part, because of the communications that I assume are taking
21 place among affected claimants, it is -- and I'm just
22 predicting -- more likely than not that you are going to get
23 responses to the next wave of omnibus objections that relate
24 to RSU claims.

25 Whereas earlier claimants, before this process

1 became joined through objections, simply allowed the omnibus
2 objection to be presented and, in effect, for defaults to be
3 entered. So we end up on a class-wide basis with disparate
4 results, which is something that I'm concerned about, but
5 really can't do much about at this point.

6 We have those parties who some time ago received
7 omnibus objections, did nothing, and their claims have been
8 disallowed. We have a group that is now in the midst of
9 litigation that hasn't yet been fully formed, and we have a
10 group that hasn't yet even received notice that their claims
11 are going to be the subject of the future omnibus objection,
12 but we know they will be.

13 We are only dealing now with the class that's
14 before the Court. That class being those who are the
15 subject of a pending RSU omnibus objection that have either
16 individually or through counsel responded to say, "Not so
17 fast. Don't treat these as equity claims."

18 Fundamentally, we are dealing with an issue of
19 law. However, as a result of the last conference that we
20 had, it is apparent that these are not all identical. And
21 so, the challenge, for the claimants and for the debtor, is
22 to come up with a set of procedures that work for those who
23 are in litigation so that we can get to the finish line.
24 Otherwise, this becomes an unduly burdensome process, both
25 for the parties and for the Court.

1 So what I said last time -- and I appreciate the
2 fact that what I say is then read, and people think about
3 well -- did everybody, in fact, follow my prescription for
4 the case? And, based upon what I've observed, I think the
5 answer is mostly yes, but this is also a process which is
6 not written down in any set of precedential rules that we can
7 easily follow.

8 We're dealing with something that's highly unusual
9 in the context of the claims administration process in this
10 case. For the most part, the claim objection process in the
11 Lehman Brothers bankruptcy cases has involved sophisticated
12 institutional players.

13 Here, we are dealing with, for the most part,
14 sophisticated individual claimants who used to work for
15 Lehman or for Lehman affiliates. We are, in effect, dealing
16 with the most sympathetic group of claimants you can
17 identify, people who had absolutely nothing to do with
18 Lehman's failure, but who are nonetheless victimized by that
19 failure, along with the claimants from around the world who
20 were victimized by that failure.

21 But the mere fact that they have sympathetic cases
22 to present doesn't change the legal analysis, and the mere
23 fact that they choose not to engage counsel doesn't make it
24 easier for them to present a case or to somehow escape the
25 consequences of what may be a group outcome. So what I am

1 encouraging is that, over the next period of time -- and
2 this is a difficult exercise -- the parties organize
3 themselves as best they can in logical groups, consider
4 retaining counsel or joining with others, to the extent that
5 makes sense, but there's no obligation to do so, and anyone
6 who is a pro se claimant who chooses to participate in this
7 litigation, which is ultimately being managed by counsel,
8 may be okay.

9 But let's recognize something. There will be a
10 group outcome, unless somebody can demonstrate that they are
11 distinguishable from the group, and I'm not taking
12 volunteers who are raising hands. There's really -- there's
13 really nothing more to say on the subject, except that the
14 burden is really on the debtor and its counsel, and the
15 parties who are presently involved in this process to come
16 up with procedures that actually work.

17 It's also important that we not unduly complicate
18 a matter that is probably fairly simply when we come right
19 down to it. You're talking about the proper classification
20 of claims in a bankruptcy case, which claims are based upon
21 somewhat complicated instruments, but those instruments
22 ultimately give the holder a right to equity.

23 MR. BERNSTEIN: Your Honor, the -- the debtors
24 agree with everything that you've just said. We -- we --
25 and we do -- we are -- having received the document request

1 and having -- since -- in discussions with the group, we
2 believe we're in the early stages of forming procedures that
3 will address the -- the difficulties of the process of
4 dealing with so many people, some represented by counsel,
5 some not, and we -- we'll continue to work with the group to
6 come up with procedures that work for everybody.

7 That -- that is our -- that is our goal, and that
8 is, quite frankly, the only way that this gets done, if we
9 have procedures that work for the group, and everybody can
10 get information that they believe they need. And then,
11 people can -- will have their day in court before Your
12 Honor, once we have the facts set up. And, if they don't
13 believe they're part of any group, they're welcome to make
14 those arguments at that time and try to distinguish themselves
15 from a group or from the prior precedent and try to figure
16 this out.

17 If they are a group, are not in a group, they'll
18 be able to make those arguments. I don't know that that's
19 something we need to determine today.

20 THE COURT: We're not determining anything today.
21 The only thing that we're doing today is identifying the
22 fact that we still have a lot of work to do.

23 MR. BERNSTEIN: Yes, and we will -- we will get to
24 work with this group and -- and try to come up with a
25 process that works for everyone.

1 THE COURT: Now, what I'd like to suggest is the
2 possibility of a future chambers conference for purposes of
3 facilitating procedures that are now being developed, to the
4 extent that there are problems in coming up with consensual
5 procedures. I recognize that, with so many parties involved
6 and with so many lawyers involved, none of whom have group
7 representation responsibility, that the potential for
8 disagreements probably multiply.

9 So, to the extent that the parties, acting in good
10 faith, are unable to reach understandings on procedural
11 issues, I'm simply letting you know that I'm available for
12 appropriate chambers conferences. But, just because I'm
13 saying that, I'm not inviting a chambers conference. I'm
14 actually encouraging the parties to work this out without
15 having to -- to come to a referee or a hall monitor. But,
16 if that's necessary, I'm here.

17 MR. BERNSTEIN: I understand, Your Honor. We will
18 see if we can work this out consensually.

19 THE COURT: There is someone who is raising his
20 hand for some reason.

21 MR. PLASKETT: Can I reapproach the bench?

22 THE COURT: You may approach again, but you have
23 to recognize that, just because you don't have a lawyer,
24 doesn't make it easier to speak in court, and somehow,
25 you're gaining the advantage of podium time that even

1 lawyers are choosing not to take, suggesting that maybe it's
2 not a good idea to be coming to the podium.

3 (Laughter)

4 THE COURT: What do you have to say?

5 MR. PLASKETT: Just that I would have preferred to
6 avoid litigation, and, to the extent that litigation can be
7 avoided, I would appreciate your considering the class of
8 commissioned salespersons being designated as a class and
9 having the opportunity to sit down with debtors' counsel to
10 discuss the matter, because maybe there aren't that many
11 issues that we're actually disagreeing on, and thus, a
12 resolution could be -- could come to some of those
13 individuals and be resolved.

14 THE COURT: You -- you don't need me, and you
15 don't need to say that to always have the opportunity to
16 attempt to work things out consensually, if that can be
17 done. That's available to every claimant and to every
18 class.

19 MR. PLASKETT: But, until this time, we've just
20 been hit with motions, and we've responded, and I will try
21 to do that, Your Honor.

22 THE COURT: Okay.

23 MR. PLASKETT: Thank you.

24 THE COURT: I think that takes care of the status
25 conference for this matter.

1 MR. BERNSTEIN: Your Honor, the next item on the
2 agenda is the one hundred and eighty-ninth --

3 THE COURT: Oh, if anybody wishes to depart, now
4 that we've covered the status conference, you're free to go.

5 MR. BERNSTEIN: All right. Again, Mark Bernstein
6 from Weil, on behalf of Lehman.

7 The next item on the agenda is the one hundred and
8 eighty-ninth omnibus objection to claims. This was an
9 objection seeking to expunge a claim -- claims based under
10 purchase agreements for which LCPI did not have any
11 liability. We had come before Your Honor on this objection
12 once before, and counsel for Marquette and Highland
13 Strategies both opposed the objection.

14 We filed a declaration of Tom Rogers explaining
15 Lehman's position as to why we did not believe this was an
16 LCPI liability under the repo, but rather an LBI liability.
17 Marquette has agreed that, based on that declaration, they
18 no longer wish to contest this omnibus objection, and, as a
19 result, we're going forth just with respect to Marquette on
20 an uncontested basis.

21 I understand that Highland still believes they
22 have a claim against LCPI, and I think we're going to
23 schedule that contested hearing for June. But the objection
24 with respect to Marquette is going forward on an uncontested
25 basis, and respectfully request Your Honor grant the hundred

1 and eighty-ninth objection with respect to Marquette.

2 THE COURT: It's granted on an uncontested basis.

3 MR. BERNSTEIN: Thank you, Your Honor.

4 I will turn the podium over to my colleague, Eric
5 Kasenetz, to handle the next two items on the agenda.

6 MR. KASENETZ: Morning, Your Honor. This is Eric
7 Kasenetz, of Weil, Gotshal & Manges, on behalf of the Lehman
8 Chapter 11 debtors.

9 Your Honor, the next uncontested item on the
10 agenda is the one hundred and fifty-ninth omnibus objection
11 to claims. This objection sought to disallow and expunge
12 certain claims based on Lehman program securities, to the
13 extent such securities failed to include valid electronic
14 reference numbers or blocking reference numbers, as required
15 by this Court's bar date order.

16 Claim 45218, filed by Corner Banca SA is the last
17 claim on this objection that has not been previously
18 disallowed by this Court or otherwise resolved. Claim 45218
19 included two purported blocking numbers relating to the same
20 security for different amounts.

21 The first blocking number, 6054668, related to
22 amounts totaling \$3,030.06. The second blocking number,
23 6165089, related to amounts totaling \$7,575.15. The one
24 hundred and fifty-ninth omnibus objection indicated it was
25 an objection to the portion of the claim in the approximate

1 amount of \$3,000. This was an error, and the debtors had
2 actually intended to object to the portion of the claim in
3 the approximate amount of \$7,500.

4 The debtors adjourned the one hundred and fifty-
5 ninth omnibus objection and, in a footnote to the -- to the
6 adjournment, indicated the correct portion of the claim that
7 the debtors were seeking to disallow and expunge,
8 specifically the amount totaling approximately \$7,500
9 relating to invalid blocking number 6165089.

10 To provide further clarify to the claimant, on
11 February 7th, 2012, the debtors sent a letter to Corner
12 Banca explaining that, although the debtors originally --
13 originally objected to claim 45218 in the amount of
14 \$3,030.06, the debtors subsequently realized that the
15 relevant securities amounted to \$7,575.15. The letter
16 provided Corner Banca 30 days from the date of mailing of
17 the letter to contest the disallowance and expungement.

18 Your Honor, I do have a copy of this letter, if
19 you wish to review it.

20 THE COURT: I'll be happy to look at it. Thank
21 you.

22 (Pause)

23 THE COURT: Okay.

24 MR. KASENETZ: Your Honor, no response was
25 received by the March 8th, 2012 response deadline that's set

1 forth in the letter. As such, we have prepared a
2 supplemental order expunging the portion of claim 45218
3 relating to ISN (ph) XS0282978666 in the amount of \$7,575.15
4 for which Corner -- Corner Banca provided invalid blocking
5 number 6165089. And, with this, we request that Your Honor
6 grant an order disallowing this portion of the Corner Banca
7 claim on an uncontested basis.

8 THE COURT: It's granted on an uncontested basis.

9 MR. KASENETZ: The next item on the agenda is the
10 debtors' one hundred and seventy-third omnibus objection to
11 claims. This objection sought to disallow claims that were
12 filed based on deferred compensation plans or agreements for
13 which the debtors have no liability.

14 The holder of claim number 10698, Burkhard Spring,
15 filed a response to the debtors' objection. We have spoken
16 with Burkhard Spring, and, at this time, he no longer wishes
17 to pursue his response to the objection and consents to the
18 claim being disallowed. So, with that, we request that Your
19 Honor grant an order disallowing the claim of Burkhard
20 Spring.

21 THE COURT: It's granted on consent.

22 MR. KASENETZ: Your Honor, the next item of the
23 agenda will be handled an attorney -- an attorney from
24 Curtis, Mallet. Thank you.

25 MS. GIGLIO: Good morning, Your Honor.

1 Cindi Giglio, from Curtis, Mallet-Prevost, Colt & Mosle, on
2 behalf of Lehman Brothers Holdings, Inc.

3 Your Honor, on February 3rd, 2012, the debtors
4 filed the two hundred and fifty-sixth omnibus objection to
5 claims. The purpose of this claim was to -- of this
6 objection was to disallow claims based on contracts that
7 were assigned to Barclays, and, therefore, of no further
8 liability to the debtors. On March 23rd, Your Honor entered
9 -- entered an order disallowing most of the claims that were
10 attached to that objection.

11 Responses were filed by Cushman & Wakefield and
12 Standard & Poor's. LBHI has since resolved the two hundred
13 and fifty-sixth omnibus objection with respect to the claims
14 filed by Standard & Poor's and Cushman & Wakefield, and both
15 parties have consented to having its claims listed on
16 Exhibit 1 to the supplemental order disallowed. As such, we
17 request that the Court grant a supplemental order
18 disallowing these particular claims. May I hand up the
19 order?

20 THE COURT: It's granted on an uncontested basis.

21 MR. WIN: Good morning, Your Honor. Zaw Win, from
22 Weil, Gotshal & Manges, for Lehman Brothers Holdings, Inc.
23 We're now moving on to the contested portion of the hearing.

24 The first matter before the Court this morning is
25 the plan administrator's objection to the claims filed by

1 Kathleen Arnold and Timothy Cotten. This is at docket
2 number 27263. And the claims at issue in this claims
3 objection have been assigned claim number 23453431334320 by
4 the debtors' claims and noticing agent.

5 There was one response that was filed to the plan
6 administrator's objection, which was styled as a request for
7 extension of time to submit objection to debtors' March 2012
8 discharge and plan administrator's objection to claims. The
9 debtors are not entirely certain what the import of this
10 document is. There was no specific deadline by which the
11 claimants apparently sought to seek an extension, and it
12 wasn't clear if they wanted an extension of the hearing or
13 just the response deadline, but, as of five p.m. yesterday,
14 they had not filed a response to the plan administrator's
15 objection.

16 THE COURT: Are Kathleen Arnold and Timothy Cotten
17 on the telephone today?

18 (No audible response)

19 THE COURT: I hear no response to that question,
20 so I assume the answer is they're not present by telephone,
21 and they're not here in person.

22 Is there anyone representing them in court today?

23 (No audible response)

24 THE COURT: Apparently, this is a contested
25 matter, but the claimants, having filed a request to extend

1 time, have not appeared to prosecute that request or to
2 explain their position.

3 I'm familiar with these claimants because of a
4 prior pending adversary proceeding in which Kathleen Arnold
5 and Timothy Cotten, as plaintiffs, brought actions against
6 LBHI arising out of mortgage foreclosure proceedings in
7 Maryland, which have been fully prosecuted to the level of
8 the Fourth Circuit Court of Appeals. It's unclear to me
9 whether or not there is a direct relationship between the
10 claim that is the subject of the pending objection and the
11 adversary proceeding, but I assume it's the same matter; is
12 that correct?

13 MR. WIN: That's consistent with the debtors'
14 understanding, Your Honor.

15 THE COURT: What are you looking for today, what
16 kind of relief?

17 MR. WIN: We'd like to have the claims disallowed,
18 Your Honor.

19 THE COURT: And, if the claims were disallowed,
20 what impact, if any, would that have on the pending
21 adversary proceeding complaint, which is the subject of a
22 motion to dismiss, but there has never been, as far as I
23 know, a formal argument with respect to the merits of that
24 motion to dismiss?

25 MR. WIN: That's correct, Your Honor. If -- if

1 you recall, at a hearing last June, you strongly suggested
2 to the claimants that they seek to obtain counsel to
3 represent them in that matter.

4 THE COURT: I recall that very well.

5 MR. WIN: And, since that time, the debtors have
6 not received any communications from them, but we wanted to
7 -- well, one, we wanted to ensure that they had a -- a
8 sufficient opportunity to take Your -- Your Honor's
9 suggestion, and then, second, there have obviously been
10 other significant matters in the case that have required the
11 debtors' attention.

12 If you recall, the basis of the debtors' objection
13 -- or motion to dismiss in the adversary proceeding was
14 based on lack of subject matter jurisdiction, and so, the
15 debtors intend to take that up shortly. I suppose, if the
16 claims are expunged, it would also moot a portion of the
17 adversary proceeding, but -- I don't specifically recall,
18 but I think there may have been a portion of the adversary
19 proceeding that was seeking declaratory or injunctive
20 relief. And, if that is the case, then that would still be
21 an open issue.

22 THE COURT: One of the things that makes this
23 difficult from an administrative perspective is that
24 Kathleen Arnold and Timothy Cotten responded to the plan
25 administrator's objection and did so with a pleading that is

1 filled with legalese, but is not clearly understandable to a
2 reader, except it appears to be asking for an adjournment,
3 because it is requesting an extension of time to respond.
4 So I'm going to treat the motion to extend time to submit
5 objection that was filed at ECF number 27705 as the
6 functional equivalent of a request for an adjournment so
7 that these claimants can more formally respond to the plan
8 administrator's objection, and I'm going to grant that
9 request and have this adjourned to a date that is the same
10 date as the date for hearing a motion to dismiss the
11 adversary proceeding so that all matters relating to the
12 claims of Kathleen Arnold and Timothy Cotten can be heard at
13 one time.

14 MR. WIN: Should that be --

15 THE COURT: Also -- excuse me. Also, because
16 these individuals appear to be continuing to represent
17 themselves and, I assume, have determined that they are
18 unable to obtain counsel or have chosen not to retain
19 counsel, they should be given formal notice of any hearing
20 to be held on the motion to dismiss, which is still pending.

21 Now, I recognize that, in the ordinary course of
22 scheduling, matters on the adversary docket are not heard at
23 the same time as matters relating to claims, but, in this
24 instance, I would make an exception. And, depending on the
25 convenience of the parties, this matter can be consolidated

1 with the adversary proceeding and heard at the same time.
2 Whether it's on a claims day or on an adversary day, I'm
3 indifferent.

4 MR. WIN: Thank you, Your Honor.

5 I believe the next matter is being prosecuted by
6 Curtis, Mallet.

7 THE COURT: Okay.

8 MS. GIGLIO: Good morning again, Your Honor.
9 Cindi Giglio, from Curtis, Mallet-Prevost, Colt & Mosle, on
10 behalf of Lehman Brothers Holdings, Inc.

11 We're here today on LBHI and the creditors'
12 committee's objection to proof of claim number 67911, filed
13 by Highbridge International LLC. The objection was filed on
14 March 20th, 2012. Highbridge filed its response on May
15 14th, 2012, and a reply was filed by the objectors on
16 Tuesday afternoon.

17 The objection seeks to disallow claim number 67911
18 as an untimely amendment and on the basis that the claims
19 asserted therein are duplicative of claims that were
20 disallowed pursuant to a court-ordered settlement agreement
21 between, among other entities, Highbridge and LBHI. Because
22 the releases granted under the settlement agreement are
23 central to the current dispute, I would like to spend a few
24 minutes addressing the terms of the settlement agreement, if
25 it's okay with Your Honor.

1 THE COURT: That's okay.

2 MS. GIGLIO: The settlement agreement represented
3 a resolution of the two hundred and twenty-ninth omnibus
4 objection to proofs of claim.

5 THE COURT: Let me -- let me just break in one
6 second, though.

7 MS. GIGLIO: Yes, Your Honor.

8 THE COURT: I've read these papers, and I'm
9 certainly familiar with the settlement agreement, which was
10 approved, I believe, in February.

11 MS. GIGLIO: Correct.

12 THE COURT: At the time that it was approved, I
13 had, frankly, no specific knowledge that Highbridge was
14 affected by it, directly or indirectly, because I viewed it
15 as a settlement with the funds managed by JPMorgan Chase,
16 and I gather that Highbridge falls within that category.

17 I am familiar with the legal arguments that are
18 being made here and with the background, so we don't need to
19 belabor it. You're certainly free to go into such
20 background as you wish to, however.

21 But, as I have read the arguments, one of the
22 things that, frankly, confuses me is how it was possible for
23 something like this to be left as a loose end, and so much
24 money is involved, it appears to me that this is either a
25 situation of a failure of parties to have clearly

1 communicated with each other or a situation of hiding the
2 ball, and I'm not sure which it is. But I don't like either
3 possible interpretation.

4 Because the facts, to my mind, are not free from
5 doubt, it appears to me that this is a situation that may
6 require discovery and the presentation of some evidence as
7 to what the parties were up to when they were negotiating
8 the settlement and issuing letters of direction concerning
9 claims and using words that are ambiguous with respect to
10 claim amendments.

11 I don't like this at all. I am very unhappy that
12 a matter of this sort is being presented for adjudication
13 and that the parties have not engaged in some effort to
14 reconcile their differences, but, just because I don't like
15 it doesn't mean that we don't have to deal with it. It is
16 highly unlikely that either side will win on the papers
17 today.

18 MS. GIGLIO: Your Honor, I just want to address
19 what you said, briefly. I -- I don't think that LBHI knows
20 whether this was a miscommunication or a hiding of the ball.
21 What we do know and why we think you can rule on the papers
22 today is based on the terms that what we believe are the
23 clear and unambiguous terms of the settlement agreement,
24 which allowed for -- and the joint instruction letter, which
25 allowed for the amendment of amounts as -- as well as the --

1 THE COURT: I don't think that's unambiguous. I
2 -- and -- and, with respect to your argument, it's subject
3 to multiple interpretations.

4 Does an amendment of amount subsume a
5 reclassification, or does it exclude a reclassification?
6 Depending on how you read the words, it could either exclude
7 or include. Depending on what the parties intended, it
8 could exclude or include. Depending on the course of
9 dealings leading up to the documentation and the express
10 intent of the parties, not the subjective intent, it could
11 have different meaning. So I understand your argument, but
12 I am unlikely to agree with it.

13 MS. GIGLIO: I understand, Your Honor.

14 You know, I just -- one other point, which I --
15 another provision of the joint instruction letter, which I
16 do think informs what amounts was set to mean was that
17 schedule 3 of the joint instruction letter, which is where
18 the Highbridge proofs of claim fell, lists the reduced
19 amount for the prior proof of claim as \$41 million, give or
20 take, and notes that that amount was subject to further
21 challenge by the debtors, and the way that this reduced
22 amount was arrived at was by disallowing the amounts
23 identified in the proof of -- prior proof of claim as
24 arising under Highbridge's prime brokerage relationship with
25 LBIE. And this bucket of disallowed claims included the \$25

1 million in what we're calling revised guarantee claims that
2 Highbridge is now repackaging as arising under new
3 guarantees in their amended proof of claim.

4 Your Honor, --

5 THE COURT: I'm just not prepared to rule on the
6 papers on this, and that doesn't mean that you can't
7 continue to argue what you're arguing. I don't mean to be
8 unresponsive to your argument. But, as I've read the
9 papers, I don't see how I can rule on the basis of legal
10 argument as to something that, to me, is facially ambiguous.

11 MS. GIGLIO: I understand, Your Honor.

12 Just want to make a few --

13 THE COURT: But I also don't like the fact that
14 this happened at all. This is a sophisticated fund that
15 appears to have engaged in sharp practices. So I'm not real
16 happy about it. Amounts like this should not just pop up
17 under a general reference to, "Well, we can amend."

18 It seems like tricks were played here. I don't
19 like it at all, but that doesn't mean that I can rule your
20 favor today.

21 MS. GIGLIO: I understand.

22 THE COURT: So I think what you should really be
23 thinking about is a schedule to get to the facts so those
24 facts can be presented to me, and I can make some judgments
25 as to how this mess happened in the first place.

1 MS. GIGLIO: Understood, Your Honor. Thank you.

2 MR. CLARK: Your Honor, Jared Clark, Bingham
3 McCutchen, for Highbridge International, LLC.

4 I've heard what Your Honor has said, and I don't
5 intend to present.

6 THE COURT: You're not going to win today, and you
7 may never win.

8 MR. CLARK: Agreed, Your Honor. Agreed, Your
9 Honor.

10 What I wanted to say for the record is that we
11 believe that the evidence will show that, at the time the
12 settlement agreement was entered into, it was very clear
13 that, when the construct was developed, that we would get
14 rid of the September -- the settled guarantees, the
15 September 2008 guarantees and the board resolution and --
16 and Standard & Poor's guarantees, that all other claims,
17 which affected some 70 funds, almost a hundred proofs of
18 claim, many of which had many different components, those
19 would all be reassigned to the funds and would be excluded
20 claims under the settlement.

21 We were negotiating a global concept deal, and
22 then, the joint instruction letter was meant to give claim-
23 by-claim effect to that global resolution, which pertained
24 solely to the settled guarantees. So we think that it never
25 came up, because it was never on the table, because it was

1 expressly excluded from the parties' negotiations. But I've
2 heard Your Honor. I understand that there's not going to be
3 a ruling today. I just wanted to make that statement for
4 the record.

5 THE COURT: Okay. I think what the parties should
6 do is return to the table, both to discuss how to develop a
7 factual record that will support their respective positions,
8 and this doesn't need to be a prolonged process, because it
9 all relates to a particular time and place. Presumably, the
10 parties who negotiated this can be readily identified, and
11 they can be deposed, if necessary, but I also think that the
12 parties should be exploring ways to resolve the underlying
13 business dispute that is reflected here.

14 I'm not accusing anybody of anything. It's just
15 that a documentation of a settlement that is immediately
16 followed by conduct that one party finds abhorrent and the
17 other party says is consistent with the understandings
18 reached raises a whole bunch of questions in my mind that
19 need to be answered before I can rule.

20 So this will be adjourned to another day, after
21 you've had a chance to present an appropriate record for me.
22 If there is a need for a formal evidentiary hearing, that
23 will be scheduled on a day that is not a claims day, but
24 rather a separate day for purposes of presenting appropriate
25 testimony and documents. I suspect I have seen most of the

1 documents, but I haven't heard from those parties who
2 negotiated them and drafted them. Okay?

3 MR. CLARK: Understood, Your Honor. Thank you.

4 THE COURT: We're adjourned.

5 (Whereupon these proceedings were concluded at 11:19
6 AM)

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I N D E X

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C E R T I F I C A T I O N

I, Nicole Yawn, certified that the foregoing transcript is a
true and accurate record of the proceedings.

Nicole Yawn

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